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Paul A Mendonsa
Blakely Sokoloff Taylor & Zafman LLP
7th Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025

EXAMINER	
KIANERSI, MITRA	

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/677,461
Filing Date: September 29, 2000
Appellant(s): BOGART ET AL.

Paul Mendosa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/26/2005

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

There is no amendment after final.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

Willis et al. U.S. Patent No. 6,385,647

Kalwitz, et al. U.S. Patent No. 5,784,622

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1-29 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 04/09/2004.

(11) Response to Argument

The invention relates to data transfer technique using multiple protocols where data is distributed over a network using a first network protocol, for example a non-reliable protocol. Portions of the data that are not received by one or more of the target systems are requested and transmitted via a second network protocol (e.g., hypertext transport protocol, or HTTP). The target systems maintain a checkpoint management service that determines the portions of data not received. In an alternative embodiment, target systems evaluate data received to determine whether a portion of the transmitted data was not received.

Appellant on page 9 of the argument argues Claim 1, transmitting data over a network using a first network protocol from a host electronic system to one or more target electronic systems; determining data not received by at least one of the target electronic systems using the first network protocol; and that requesting from the host electronic system, the data not received by at least one of the target electronic systems be transmitted using a second network protocol .

Examiner's reply: Appellant indicates receiving the subsets of data from the host system using a second network protocol, but has not claimed the second network protocol is different from the first network protocol. Therefore, the first and second protocol could be considered the same protocol but implementing tasks like transmission and retransmission at different times.

Appellants on the same page argues that the office actions have not specifically addressed the claim limitations related to determining data not received by at least one target device or retransmission of data not received by a different network protocol and on page 10, lin16 argues that because Kalwitz discloses transmission from different devices using different protocols and Willis discloses transmission and retransmission using the same protocol, nothing in the combination of Kalwitz and Willis can teach or suggest transmitting data using a first protocol, determining data not received using the first protocol and then requesting transmission of the data not received via a second protocol.

Examiner's reply: Although in prior art Willis et al. data is being transmits and retransmitting with the same network protocol, but the task is being implemented at different times. Kalwitz et al. in fig.7 illustrate two different protocols. (i.e. SPX/IPX and TCP/IP) and in Fig 5, illustrate a sequence of events. Examiner interprets the successful and unsuccessful transmissions of the data in the claimed invention as the sequence of events (see, Fig 7-step S15) of the Kalwitz et al. invention respectively. Therefore, in fig 7 Kalwitz et al. illustrate two different protocols, e.g. protocol SPX transmission considered as unsuccessful transmission and protocol TCP considered as successful transmission. Then by combining the teaching of Willis et al. at col 4-lines 36-42 and also at the same time step S-15 of Kalwitz et al. the motivation to achieve the appellant claimed invention is achieved.

Examiner's note: Examiner's replies to Appellant's arguments concerning independent claims 6, 11,16, 20, 24 and 27 are similar to the Examiner's reply for independent claim 1, *id.*

Appellant at page 10, line 2 argues that, the office action does not address the claim limitation related to retransmission of data not received by a different network protocol. It should be noted that the appellant has not claimed the second network protocol is different from the first network protocol.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willis et al. (US 6,385,647) and further in view of Kalwitz et al. (US 5,784,622).

1. As to claim 1, Willis et al. discloses a method comprising:

-transmitting data over a network using a first network protocol from a host electronic system to one or more target electronic systems; (Abstract, lines 3-8)

-determining data not received by at least one of the target electronic systems;

-requesting from the host electronic system, be transmitted using the first network protocol (the receiving facility will examine the status of the transmission and if the transmission was unsuccessful, the receiving facility will transmit information indicating an error status to the source, and the source will respond by transmitting the multicast data again, thus providing reliable data delivery. col 4, lines 36-40)

Willis et al. does not explicitly teach when the data not received by at least one of the target electronic systems using a second network protocol.

Examiner's reply: Appellant indicates receiving the subsets of data from the host system using a second network protocol, but has not claimed the second network protocol is different from the first network protocol. Therefore, the first and second protocol could be considered the same protocol but implementing tasks like transmission and retransmission at different times.
Kalwitz et al. in Fig. 7 illustrate two different protocols, e.g. protocol SPX transmission considered as unsuccessful transmission and protocol TCP considered as successful transmission. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Willis et al. at col 4-lines 36-42 and also at the same time step S-15 of Kalwitz et al. to achieve the appellant claimed invention and to improve scalability and economy through the use of the industry standard non-proprietary software transport mechanism (IP) at the receiving facility.

2. As per claim 2, wherein the first network protocol is a non-reliable network protocol. (multicast routing protocol is used which is an unreliable network protocol, Table 1. Willis et al.).

3. As per claim 3, wherein the non-reliable network protocol comprises one of a broadcast protocol and a multicast protocol. (col 3, lines 55-58, Willis et al.)
4. As per claim 4, wherein the second network protocol is a reliable network protocol. (col 4, lines 41-42, Willis et al.)
5. As per claim 5, wherein determining data not received by at least one of the target electronic systems further comprises logging, with a checkpoint (checksum 345, Willis et al.) management service, packets of data received by the target electronic systems. (Fig.10), (col 16, lines 57-67) and (col 17, lines 1-13, Willis)
6. Claims 6-9, recite similar limitations as claim 1-4. They are analyzed and rejected by the same rationale.

7. As per claim 10, wherein the sequences of instructions that cause the

one or more electronic systems to determine data not received by at least one of the target electronic systems further comprise sequences of instructions that, when executed, cause the one or more electronic systems to log, with a checkpoint management service, packets of data received by the target electronic systems. (Processor or chip in a computer that carries out all the instructions of a program, Table 3 and col 9, lines 7-10, Willis et al.)

8. Claims 11-13 recite similar limitations as claim 1-3. They are analyzed and rejected by the same rationale.

9. Claim 14 recites similar limitations as claim 10. It is analyzed and rejected by the same rationale.

10. Claim 15 recites similar limitations as claim 4. It is analyzed and rejected by the same rationale.

11. As per claim 16, a method comprising: transmitting a predetermined set of data using a first network protocol to multiple target systems; (col 4, lines 48-51, Willis et al.) receiving one or more requests from at least one target system for subsets of data from the predetermined set of data; transmitting the subsets of data to at least one target system using a second network protocol. (Examiner's reply: Appellant indicates receiving the subsets of data from the host system using a second network protocol, but has not claimed the second network protocol is different from the first network protocol. Therefore, the first and second protocol could be considered the same protocol but implementing tasks like transmission and retransmission at different times. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Willis et al. at col 4-lines 36-42 and also at the same time step S-15 of Kalwitz et al. to achieve the appellant claimed invention and to improve scalability and economy through the use of the industry standard non-proprietary software transport mechanism (IP) at the receiving facility).

12. As per claim 17, wherein transmitting a predetermined set of data using a first network protocol to multiple target systems comprises logging transmitted packets of data with a checkpoint management service for one or more of the target

systems. (Via Checksum verification, col 23, line 19, Kalwitz et al.)

13. Claims 18-19 recite similar limitations as claims 2 and 4. They are analyzed and rejected by the same rationale.

14. Claims 20-23 recite similar limitations as claims 16-19. They are analyzed and rejected by the same rationale.

15. As per claim 24, a method comprising receiving at least a portion of a predetermined set of data from a host system using a first network protocol; loading at least some of the modules from the binary file, col 21, lines 65-67)
- generating one or more requests from for subsets of data from the predetermined set of data; receiving the subsets of data from the host system using a second network protocol. (Examiner's reply: Appellant indicates receiving the subsets of data from the host system using a second network protocol, but has not claimed the second network protocol is different from the first network protocol. Therefore, the first and second protocol could be considered the same protocol but implementing tasks like transmission and retransmission at different times. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Willis et al. at col 4-lines 36-42 and also at the same time step S-15 of Kalwitz et al. to achieve the appellant claimed invention and to improve scalability and economy through the use of the industry standard non-proprietary software transport mechanism (IP) at the receiving facility.

16. Claims 25-29 recite similar limitations as claims 22-26. They are analyzed and rejected by the same rationale.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Mitra Kianersi
October 17, 2005

Conferees

Jason Cordone JASON CARDONE SPE AU 2145

Rupal Dharia RUPAL DHARIA SUPERVISORY PATENT EXAMINER

Paul A Mendonsa
Blakely Sokoloff Taylor & Zafman LLP
7th Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025